

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	DA 15-1169
)	WT Docket No. 08-7
Public Safety and Homeland Security Bureau)	
Requested Comments to Topics)	

REPLY COMMENTS OF NEXGEN GLOBAL TECHNOLOGIES, LLC

NexGen Global Technologies, LLC (“NexGen”) submits these reply comments in response to the Commission’s Public Notice in the aforementioned docket(s).

OVERVIEW OF NEXGEN: NexGen has developed IP/Cloud-Based technologies for real time non-emergency SMS (Short Message Service) Two-Way Texting¹, and MMS (Multi Media Service), photo and video clip messaging Media Retrieval in support of Communication Centers.

Additionally, NexGen was recently certified as a Text-to-911 Direct IP Provider and is beginning to install its Text-to-911 browser based and CAD (Computer Aided Dispatch) system integrated versions of its solution.

NexGen’s other products, Two-Way Text and Media Retrieval, are a complement to Text-to-911. NexGen’s patent pending Multi Media Solution (specifically the retrieval of photos and video clips from cell phones) and our Two-Way Text Solutions have been proven to greatly support Public Safety and have the ability to accelerate and scale Next Generation 911 (NG911) services with features and functionalities that can significantly assist and strengthen Public Safety efforts.

NexGen systems are already in place at the Florida School for the Deaf & Blind², Union County,

¹ Among the use cases for NexGen’s non-emergency Two-Way Text Solution can be used to text pocket dials, without taxing the Text-to-911 system.

² NexGen developed, donated and deployed its Two-Way Text and Media Solutions at the Florida School for the Deaf and Blind (FSDB) located in Saint Augustine, Florida. FSDB, established in 1885, is a fully accredited State of Florida public school and outreach center for eligible Pre-K and K-12 deaf/hard of hearing or blind/visually impaired students. FSDB serves about 800 students on campus in academic programs, in addition to about 400 infants and toddlers and their families across the State of Florida through its Parent Service Programs. Students,

NC and Puerto Rico 911. The solutions are proven to both enhance and greatly support Public Safety. As of this writing, NexGen's Media Solution has assisted in saving the life of one individual and the recovery of a missing child.

According to the FBI (Federal Bureau of Investigation), [in 2014 there were 466,949 National Crime Information Center \(NCIC\) entries for missing children](#), with an overall total of 635,155 missing person records entered into NCIC in 2014 alone. Also according to the FBI, every 40 seconds a child goes missing in the U.S.

In "[A Law-Enforcement Guide to Case Investigation and Program Management](#)", published by National Center for Missing and Exploited Children, the guide states that "The critical importance of an effective initial response was also made *dramatically* clear in findings from Investigative Case Management for Missing Children Homicides: Report II, a key law-enforcement study conducted for the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) by the Washington State Attorney General's office. This nationwide study found in cases when a child is killed during an abduction 46.8% will die within an hour of the abduction and 76.2% will be killed within 3 hours of the abduction. It is important, however, to note not all children will be killed at the hands of their abductors. These statistics only reflect those of children actually killed by their abductors. In fact far more missing children are located and safely returned home than those who are abducted and murdered."

The FBI recommends among key items that parents should keep up-to-date are photographs of their children. However, this leads to the question: What is the fastest and most efficient method to distribute a photo of a missing child and get a photo of a missing child into the hands of First Responders? The answer is simply to allow PSAPs to use the same 21st Century technology (SMS/MMS) which is used by everyday people, even in under developed countries. This can be accomplished quickly if the unregulated control that the wireless providers are currently able to exert over messaging and the short code application process becomes subject to Title II. This will allow inventors/developers to continue to innovate

faculty and parents are now able to openly and effectively use NexGen's Two-Way Text and Media Solutions in order to communicate directly with the FSDB Police Communications Center via SMS text messaging.

In July of 2015, FSDB received a Department of Justice National Safety Award for adapting and using NexGen Two-Way Text and Media Solutions.

and develop new solutions in support of Public Safety using short codes and messaging as delivery methods.

The missing child previously referred to, whose recovery was assisted by NexGen's Media Solution, was found within an hour because the First Responder had a photo of the missing child. This photo was distributed to key community personnel within minutes through NexGen's system, using common SMS/MMS technology.

NexGen's Media Solution provides a Call Taker the ability to receive a photo or video clip from a cell phone, then forward the photo or video clip of a missing child, while an officer is still on scene with the parent(s)/guardian(s) to every First Responder and media outlet in their distribution list – all in real time.

Every jurisdiction should have the ability to receive and forward photos and video clips from cell phones in the immediate future, and not years from now. Having this ability will afford the approximately half a million children who go missing each and every year an increased chance at being recovered safely.

The aforementioned lifesaving events also prove that NexGen type services substantially improve emergency response, assist in saving lives, recovering missing persons, can reduce property damage, and allow for the proper allocation of emergency resources as well as expand access to emergency help.

NexGen's non-emergency Two-Way Text and Media Solutions allow a Call Taker to open and conduct a Two-Way Text session with a cell phone user, in addition to allowing the Call Taker to retrieve photos and video clips from cell phones. The Caller does not have to install a cell phone app on their respective cell phone, as the solution interfaces with a cell phone's native SMS and MMS services. As a stand-alone system, NexGen solutions easily integrate into any existing Communications Center without an increased cost for hardware, software or upgrades to their equipment/infrastructure, and a Call Taker's computer only needs a simple web browser and Internet access to use our stand alone solution. The Communications Center can also elect to integrate our solutions into their browser based CAD system, using our APIs (Application Program Interfaces). Use of our APIs minimizes the number of applications a Call Taker needs to have open on their computer screen and Call Takers are trained on use of the system within an hour.

To further facilitate the process, the Call Taker doesn't need to ask the caller which carrier or type of cell phone they are using. NexGen solutions automatically interconnect across all wireless networks, types of cell phones and cellular enabled wireless devices. With respect to photos and video clips, once received, the Call Taker is able to immediately forward the photo or video clip, (along with pertinent biographical information such as height, weight, description, etc.), to all persons listed for distribution in the Control Panel of their Communication Center's NexGen system - all in real time. The photo or video clip can also be distributed directly through the Communication Center's CAD using our CAD interface.

NexGen is also in the process of developing the ability to retrieve the latitude/longitude (X/Y) location coordinates of cell phones in communication with its network. Unfortunately, NexGen's short code application for this service has now been pending for approximately 72 weeks, over 18 months. As a point of reference, a short code application approval normally takes from 12 to 16 weeks, 3 - 4 months. Until the short code is fully approved, our development efforts with respect to retrieving latitude/longitude coordinates are on hold, as well as other planned product development in support of Public Safety. Notwithstanding, NexGen is continuing efforts to finalize its Two-Way Text and Media Solutions for delivery to Public Service Answering Points (PSAPs). The critical latitude/longitude portion of our technology (along with other modules) will continue to be delayed until we can receive full wireless provider approval. This extraordinary delay has created the perception of a lack of cooperation encountered from the wireless providers with respect to our short code application, which we believe can be construed as discriminatory in nature.

NEXGEN'S REPLY TO PERTIENT TOPICS:

NexGen fully agrees and can readily validate Twilio's assertions "that wireless providers engage in a variety of discriminatory and anti-competitive practices that cannot be adequately addressed absent a declaratory ruling classifying messaging services under Title II³." NexGen also agrees "that, under judicial

³ In the Matter of Petition of Twilio Inc. for an Expedited Declaratory Ruling Stating That Messaging Services Are Title II Services, filed August 28, 2015 ("Twilio Petition"), at 39.

and Commission precedent, messaging services constitute telecommunications services and commercial mobile radio services and are thus subject to Title II.”

NexGen also agrees that the Wireless Telecommunications Bureau (Bureau) should “refresh the record on its similar petition from Public Knowledge⁴ and other public interest organizations seeking to reclassify SMS messages and short codes as Title II telecommunications services, or alternatively as Title I services subject to non-discrimination provisions of Section 202 of the Act.”

NexGen’s firsthand experience with the short code application process has been such that, to date, our short code application has been in a pending status by the wireless provider(s) for over an 18-month period, and counting, while approval of a short code application normally takes 3 – 4 months. NexGen believes this excessive delay validates and fully supports Twilio’s claim that the wireless providers do in fact practice discriminatory and anti-competitive practices. Although we have not received approval to use our pending short code, and as such cannot use this code, we are obligated to pay \$1,500.00 per month in order to “hold” the short code number while the wireless provider(s) sit on our application. This is all without benefit of the wireless providers being required to provide feedback as to exactly why our application is pending. This raises great concern over the apparent discriminatory and anti-competitive practices being engaged in by the wireless providers in this matter and in general, with or without deliberate intention.

To date, the only feedback received respective of the excessive delay with NexGen’s short code application has been that;

1. “It does not make financial sense to approve NexGen’s short code application”
2. “Short codes for use in support of Public Safety will not be approved because of the liability”

(Even though our contracts specifically provide a release of liability, NexGen was required to modify its application, to exclude Public Safety)

⁴ In the Matter of Petition of Public Knowledge et. al for [Declaratory Ruling Stating Text Messaging and Short Codes are Title II Services or are Title I Services Subject to Section 202 Nondiscrimination Rules](#), filed Dec. 11, 2007. (“Joint Petition”); “Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling that Text Messages and Short Codes are Title II Services or are Title I Services Subject to Section 202 Non-Discrimination Rules,” Public Notice, DA 08-78, rel. Jan. 14, 2008.

Placing messaging and short codes under Title II, will readily invalidate the reasons referenced directly above in 1 and 2.

The Federal Register has published A Rule by the Federal Communications Commission on 9/16/14, [“Facilitating the Deployment of Text to 911 and Other Next Generation 911 Applications: Framework for Next Generation 911 Deployment”](#), where pursuant to the [“Liability Protection” section](#), “58. In the *Further Notice*, the Commission recognized that adequate liability protection is needed for PSAPs, CMRS providers, interconnected text providers, and technology vendors to proceed with implementation of text-to-911. The Commission noted that the New and Emerging Technologies 911 Improvement Act, [Public Law 110-283](#), July 23, 2008, 122 Stat. 2620 (NET 911 Act); [47 U.S.C. 615](#), expanded the scope of state liability protection by requiring states to provide parity in the degree of protection provided to traditional and non-traditional 911 providers. In the Next Generation 9-1-1 Advancement Act of 2012, [Public Law 112-96](#), Feb. 22, 2012, 126 Stat. 156; [47 U.S.C. 1472](#), section 6506 (NG911 Advancement Act), Congress further extended these parity provisions to providers of NG911 services.”, which provides liability protection “to traditional and non-traditional 911 providers”. This [Liability section](#) invalidates the wireless providers excuse that approving short codes in support of Public Safety is a liability, since the use of short codes and messaging in continuation and furtherance of a 911 call should qualify both messaging and short codes as being subject to Title II. Wireless long codes in in furtherance and support of a 911 call should also be classified subject to Title II when used in support of Public Safety.

Furthermore, the wireless providers have already approved short codes for use in Public Safety when they approved the short code applications for, and have been carrying the short code messaging traffic of companies like Agent511, Emergency-Broadcasting.com, Group Texting and others. These approvals further validate that discriminatory practices are being engaged in by the wireless providers. Since Text-to-911 texting service, provided by the wireless providers, is carried over the same commercial messaging network that short code messaging and 10-digit long code SMS are carried, these facts also validate that discriminatory practices are being practiced by the wireless providers. These practices speak to discriminatory and anti-competitive practices and therefore lend themselves to having the Commission

abide by a duty to act fairly and hand down a declaratory ruling classifying messaging services and short codes under Title II.

The second subsection of Title II clearly states that common carriers can't make any unjust or unreasonable discrimination in charges, practices, classification, regulation, facilities or services. In order to resolve the clear and evident disparities in the short code approval process and messaging, NexGen respectfully supports and joins Twilio in asking the Commission for a Declaratory Ruling Stating Text Messaging (and Short Codes) are Title II Services. Since the Commission last sought comment in 2008 in a similar proceeding, there have been significant market place and legal developments that fully support classifying messaging services and short codes under Title II. By doing so, the Commission will ensure that the American Public will see the 911 system evolve to match and even exceed the 21st Century solutions that have and will be developed in support of the Public Safety of the general public that many Americans already believe are (or should be) in place.

NexGen respectfully affirms that the Commission should immediately move forward with a favorable Declaratory Ruling Stating Text Messaging and Short Codes are Title II Services.

Respectfully submitted,

/s/ Michael Romano

Michael Romano

Michael Romano, Founder & CEO

Peggy DeFilippo

Peggy DeFilippo, Chief Operating Officer

NexGen Global Technologies, LLC

1511 East State Road 434

Winter Springs, FL 32708

(800) 932-6751

<http://MIRS911.com>

November 17, 2015